

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1172 of 2005
In
SPECIAL CIVIL APPLICATION No. 17311 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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DIVISIONAL CONTROLLER, GUJARAT STATE ROAD TRANSPORT CORP. -
Appellant(s)

Versus

DHARMESH DAYALAL TRIVEDI - Respondent(s)

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Appearance :

MR HS MUNSHAW for Appellant(s) : 1,
MR TR MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 13/09/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Admit. Mr. T.R. Mishra appears and waives service for the respondent. At the joint request of the learned

counsel for the parties, the matter is taken up for final disposal today and is disposed of by this order.

2. The appellant - Corporation has challenged, in this appeal, the judgment and order passed by the learned Single Judge (K.S. Jhaveri, J.) of this court whereby the learned Single Judge partly allowed the writ petition of the appellant - Corporation and directed the appellant - Corporation to reinstate the respondent workman as Helper and not on the post of Conductor with continuity of service without any back wages with a penalty of stoppage of five increments with future effect which was awarded by the Labour Court.

3. It was submitted by learned counsel Shri Munshaw for the appellant - Corporation that there were as many as 8 defaults committed by the respondent workman working as Conductor and this time Rs.188/- was found from him without issuing tickets to the passengers. Therefore, the Labour Court, at the first instance, ought not to have interfered with the order of termination and ordered reinstatement without back wages by imposing penalty of stoppage of five increments with future effect. He submitted that having regard to the facts and

circumstances of the case, even the learned Single Judge was of the opinion that such a person cannot be reinstated in service on the same post of Conductor. However, having observed that such a person cannot be reinstated in service on the same post of Conductor, the learned Single Judge committed an error in ordering reinstatement of the respondent workman on another post of Helper instead of Conductor. Thus, while exercising his supervisory jurisdiction under Article 227 of the Constitution, the learned Single Judge committed grave error in ordering reinstatement of the respondent workman on another post of Helper with continuity of service but without back wages with the punishment of stoppage of five increments with future effect. Mr. Munshaw further submitted that appointment on the post of Helper can only be made by way of Direct Selection after candidates are interviewed. He, therefore, submitted that the learned Single Judge exceeded in his supervisory jurisdiction under Article 227 of the Constitution. Therefore, this court should interfere with the same and set aside that part of the order by which the respondent workman is ordered to be reinstated on the post of Helper.

4. Learned counsel Shri Mishra appearing for the

respondent workman, however, submitted that though the petition filed by the appellant - Corporation before the learned Single Judge was labelled as a petition under Articles 226 and 227 of the Constitution, strictly speaking, it was a petition under Article 227 and the learned Single Judge himself has exercised his supervisory jurisdiction under Article 227 of the Constitution. Therefore, at first instance, the present Letters Patent Appeal would not be maintainable as even according to the submission of learned counsel for the appellant, the learned Single Judge has exercised his jurisdiction under Article 227 of the Constitution. In support of his submission, Mr. Mishra has placed reliance on two judgments of two Division Benches of this court in the case of

(1) **ISHWARBHAI NAROTTAMBHAI PATEL vs. K.H.**

TRIVEDI & ORS. reported in 2003 (3)

G.L.R. Page 1878.

(2) **TALUKA DEVELOPMENT OFFICER, PATAN & ANR.**

vs. SADAJI KUVARJI THAKORE reported in

2004 (1) G.L.R. Page 502.

4.1 Mr. Mishra further submitted that even during the pendency and final disposal of their writ petition i.e.

Special Civil Application No.17311 of 2003, the appellant - Corporation itself has reinstated the respondent workman on the post of Helper and since last 1^{1/2} years, the petitioner is working on the post of Helper. Therefore, it would not be in the interest of justice to interfere with the order passed by the learned Single Judge. To this, Mr. Munshaw submitted that the appellant - Corporation had to reinstate the respondent workman on the post of Helper in view of the interim order dated 20th February, 2004 passed by the learned Single Judge (Jayant Patel, J.) in Special Civil Application No.17311 of 2003, while admitting the writ petition. It is a brief order which we would like to reproduce, which is as under:

Special Civil Application No.17311 of 2003

Coram: Jayant Patel, J.

Date : 20/02/2004

ORAL ORDER

Rule. Ad-interim relief in terms of paragraph 8 [C] with the further observation that if as per the petitioner-Corporation the respondent is not gainfully employed, it would be open for the petitioner to offer work by assigning duty of the same cadre

other than that of Conductor and to pay wages with a view to avoid liability under section 17.B of the ID Act. The matter may be placed for final hearing on 22nd April 2004.

5. From the bare reading of the interim order dated 20th February, 2004 passed by another learned Single Judge of this court, it is clear that the appellant - Corporation was never compelled to reinstate the respondent on another post of Helper by the learned Single Judge. The learned Single Judge has simply observed that it would be open for the petitioner to offer work by assigning duty of the same cadre i.e. of Helper other than that of Conductor and to pay wages with a view to avoid liability under Section 17-B of the I.D. Act.

6. In view of the above, at first instance we are of the considered opinion that in view of the two aforesaid judgments in the case of Ishwarbhai Narottambhai Patel and Taluka Development Officer, Patan (supra), this appeal is not maintainable. Even if it was maintainable then also we would not have interfered with such an order passed by the learned Single Judge ordering reinstatement

of the respondent workman on the post of Helper. In fact, first they willingly complied with the interim order dated 20th February, 2004 passed by the learned Single Judge. At that time also, the Corporation had never pointed out to the learned Single Judge that the recruitment on the post of Helper can only be made by way of direct selection after taking interview of the candidates. Thus, now it is not open to the appellant - Corporation to urge this contention before this court.

7. In view of the above discussion, this appeal fails and is hereby dismissed with no order as to costs.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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